



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
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MINUTES STATE WATER CONTROL BOARD

April 27, 2009
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
Lou Ann Jessee Wallace
Robert H. Wayland, III

Komal K. Jain, Vice-Chair
John B. Thompson

Board Members Absent:

Thomas D. C. Walker

Vacancy

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened on April 27, 2009, at 9:34 a.m., recessed at 11:50 a.m., reconvened at 1:05 p.m. and adjourned at 2:40 p.m.

Approved Minute No. 1
July 23, 2009



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 1 – Minutes

The Board approved the minutes from the meetings on October 16-17, 2008, and December 4, 2008.



Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS APRIL 27, 2009 MEETING

MINUTE NO. 2 – Proposed Rulemaking to Amend Nutrient Waste Load Allocations for Merck, Inc. in 9 VAC 25-720-50.C. (Water Quality Management Planning Regulation, Shenandoah-Potomac River Basin).

STAFF PRESENTATION: Rick Weeks/DEQ Deputy Director made the staff presentation on proposed amendments to revise the total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) in 9 VAC 25-720, as requested by Merck. The Board deferred final action on this rulemaking at their December 4, 2008 meeting, directing the staff to have a considered discussion with Merck and citizen conservation groups that would give an alternative to the effluent numbers originally presented.

Staff met several times with Merck and citizen group representatives (CBF, Shenandoah and Potomac Riverkeepers), along with staff from the Virginia Economic Development Partnership and Rockingham County from January to March 2009. The focus of these discussions was the preference on everyone's part that Merck be able to acquire allocations and thus avoid the need to raise the "cap" on nutrient loading for the Shenandoah River. However, the Nutrient Credit Exchange Law only allows "new or expanding" facilities to acquire allocations. Therefore, it would take a regulatory action by the Board to facilitate a purchase of an allocation by Merck and staff would address this element in the recommendations to follow.

Through a combination of actions including a rulemaking to facilitate securing of allocations by Merck from other Shenandoah-Potomac dischargers and the expected availability of nutrient compliance credits under the trading program if needed, DEQ staff is confident there will be credits available in the basin over the next five years. In the unlikely event that credits are not available, Merck has committed funds in the amount they would have spent on credits for other nutrient reduction projects in the region.

In summary, staff sees this combination as being the best resolution to allow Merck its needed compliance certainty while maintaining the nutrient "cap", in the interim and over the long term. The success of this approach is assured by the following:

1. Staff fully expects there will be nutrient credits available until the second regulatory action is completed;

2. Merck has agreed, that if there is a year when they need to purchase credits and none are available, they will deposit equivalent funding into an escrow or trust to be disbursed to fund an environmental project in the Shenandoah Valley with preference given to nonpoint source nutrient reduction projects; and,
3. While the recommendation assures that credits need to be purchased in the interim, completing the second regulatory action is expected to occur prior to the end of 2011, the first year the nutrient allocations in the Watershed General Permit are effective; thereby, eliminating the need for the credit purchases by Merck and ensuring the current regulatory based nutrient allocations are maintained in the Shenandoah-Potomac basin.

COMMENTS: The Board then heard comments and presentations from several speakers that had been involved in the rulemaking process.

- 1) Craig Kennedy, Merck Inc. – Merck is committed to environmental protection and corporate responsibility, but independent compliance capability is also a necessity. Appreciated the Board’s consideration and creative thinking by the advisory group that lead to the proposal being brought forward today, which Merck supports.
- 2) Joe Tannery, Chesapeake Bay Foundation – Agreed that the proposal has moved this issue forward, but CBF still cannot support the recommendation. While Merck’s compliance assurance is made certain under the proposal, all other stakeholders should receive similar assurance regarding protection of water quality standards and increased nutrient waste load allocations work against this. If the plans fail, then the result is a permanent increase in loads to a basin already “over-allocated” for total nitrogen. Requested contingency plans to include a requirement that the increased allocations do not become effective unless and until the additional “offset” loads are identified with assurance of being transferred to/secured by Merck.
- 3) Dorothy Abbott, citizen – opposes increased nutrient waste load allocations.
- 4) Ken Smith, Virginia Watermen’s Association - opposes increased nutrient waste load allocations.
- 5) Jeff Kelble, Shenandoah Riverkeeper – While he shares CBF’s sense that the plan doesn’t ensure “no-net-increase” for the basin, he neither supports nor opposes the proposal. Is concerned about the precedent this might set for other dischargers seeking increased nutrient allocations, but if the Board is convinced this solution will protect water quality then they should vote to approve.

STAFF RECOMMENDATIONS and BOARD ACTION: Staff presented the following recommendations for Board consideration, which reflect changes made since the proposal was brought before the Board at their December 4, 2008 meeting:

1. Adopt the proposed changes to the Water Quality Management Planning Regulation (9 VAC 25-720-50.C), as shown:

VA Water Body ID	VPDES	Total Nitrogen WLA (lbs/yr)	Total Phosphorus WLA (lbs/yr)
B37R	VA0002178	14,619 [14,619] <u>43,835</u>	1,096 [1,096] <u>4,384</u>

Notes: (10) Merck-Stonewall – (a) on January 1, 2011, the following waste load allocations [WLAs] are effective and supersede the existing WLAs: total nitrogen of 43,835 lbs/yr and total phosphorus of 4,384 lbs/yr; (b) waste load allocations will be reviewed and possibly reduced based on “full-scale” results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility, consistent with the level of effort by other dischargers

in the region. The "full scale" evaluation will be completed by December 31, 2011 and the results submitted to DEQ for review and subsequent Board action; (c) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with §62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/year; and (d) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in paragraph (c).

2. Direct staff to initiate a rulemaking to reduce or remove unused allocations of other facilities within the Shenandoah-Potomac River Basin, preferably in the area of Merck's discharge, to offset the needed increased nitrogen and phosphorus allocations for Merck due to the technological limitations of treatment.

3. Direct the staff to provide an annual report on unused nutrient allocations for each significant discharger. This will include a comparison of actual loads vs. allocations. For municipal facilities, this will also include a comparison of each facility's constructed capacity vs. the design flow used to establish the allocations. For industrial facilities, updates will be provided on any known changes to the basis for the original allocation.

The Board voted unanimously to adopt the staff recommendations.



Ellen Gilinsky, PhD
Director, Water Division

8/12/09

Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS APRIL 27, 2009 MEETING

MINUTE NO. 3 – Proposed Rulemaking to Amend Nutrient Waste Load Allocations, for Frederick Winchester Service Authority (FWSA)-Opequon WWTP, in 9 VAC 25-720-50.C. (Water Quality Management Planning Regulation, Shenandoah-Potomac River Basin).

STAFF PRESENTATION: Alan Pollock/DEQ Office of Water Quality Programs made the staff presentation on requested amendments to the total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) in 9 VAC 25-720, as requested by FWSA. At their December 4, 2008 meeting, the Board approved a staff recommendation to deny the requested amendments but the action was delayed until a companion part of the rulemaking (Merck) could be finalized at the Board's April 2009 meeting.

Following the Board's December 2008 action the 2009 General Assembly passed budget language directing the Board to reconsider FWSA's petition, using these criteria:

- 1) The Commonwealth's multiple investments in the facility through the Water Quality Improvement Fund (WQIF);
- 2) The execution of a WQIF agreement for the installation of state-of-the-art nutrient removal technology on or before December 31, 2008;
- 3) Capital investments made prior to July 1, 2005 to expand the facility's capacity;
- 4) The capacity under which the facility will likely operate by December 31, 2010;
- 5) The facility's schedule for planning, design, and construction; and,
- 6) The discharge flow authorized by the facility's discharge permit and the tiered flows contained in that permit.

FWSA submitted a comment letter to DEQ addressing these criteria, which was included with the Board materials sent before the April 27, 2009 meeting.

COMMENTS: The Board then heard comments and presentations from several speakers that had been involved in the rulemaking process.

- 1) Del. Beverly Sherwood, VA House of Representatives – Explained the basis for the General Assembly's budget language directing the Board to reconsider this request. A central point is the question of fairness – FWSA should be given the same consideration as other expanding facilities receiving conditionally increased nutrient allocations. Noted that other plants may not have

expansions completed by the regulatory deadline, while FWSA is on schedule to complete on or before that date.

- 2) Chris Pomeroy, legal counsel for FWSA – Recapped Opequon’s 2000 BNR upgrade which increased the aeration reactors’ treatment capacity to 12.6 MGD. Explained how then-SNR Murphy’s memo on the Bay Tributary Strategies concluded that combined loads from three Virginia basins (Shenandoah-Potomac, Rappahannock and Eastern Shore) were below the aggregate allocations that have a direct impact on main-Bay water quality conditions, so the concern about just the Shenandoah-Potomac being over-allocated is mitigated. FWSA has met all 6 criteria set by the General Assembly for the Board’s reconsideration of the petition, and noted that the expanded design flow will be on-line by December 2010. Under the circumstances, FWSA is uniquely qualified and deserving of the Board’s approval for the requested amendments.
- 3) Joe Tannery, Chesapeake Bay Foundation – Shenandoah-Potomac is over-allocated for total nitrogen, and should be viewed separately from the other Bay tributaries. This is important because offsets are needed before any increased allocations are granted to assure protection of water quality standards in each individual basin.
- 4) Jeff Kelble, Shenandoah Riverkeeper –Admitted that this discharge isn’t in the Shenandoah River Basin, but water is withdrawn from the Shenandoah that ends up in the Opequon WWTP effluent and as a result there is a Shenandoah water quality connection. Both the Shenandoah and Potomac Rivers are impaired by nutrients, although there are no water quality standards yet for nutrient enrichment in free flowing waters. If approved, this increase will have a major, negative impact on water quality in the region.

The Board then had questions answered by staff on the subjects of the tiered flow limits in the permit, the basis for using 8.4 MGD in calculating the existing allocations, and the Bay TMDL and how the issue of over-allocation will be dealt with by the Board in their approval process before submittal to EPA.

STAFF RECOMMENDATION and BOARD ACTION: Staff reported that the information submitted by FWSA, addressing the General Assembly’s criteria, did not provide any reason to alter the staff recommendation made to the Board at their December 4, 2008 meeting. Staff recommended the Board disapprove the requested amendments to the WQMP Regulation (9 VAC 25-720-50.C) to increase the nutrient allocations for the FWSA-Opequon facility.

The Board voted unanimously to adopt the staff recommendation.



pan Ellen Gilinsky, PhD
Director, Water Division
4/30/09

Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 4 – Amendment to the Water Quality Standards (9VAC25-260-275) Protection of Eastern Shore Tidal Waters for Clams and Oysters

Elleanore Daub of the Office of Water Permits and Compliance Assistance summarized the amendment, the public comments and changes made since the public hearing. The amendment requires an analysis be conducted to determine if a wastewater management alternative other than a Virginia Pollutant Discharge Elimination System discharge to shellfish waters on the Eastern Shore would be feasible, produce less of an environmental impact, and not result in significant social and economic impacts. This requirement is initiated only when applications for new or expanded individual VPDES discharges to Eastern Shore waters result in condemnations but are not denied pursuant to 9VAC25-260-270 (Shellfish buffer zones; public hearing).

Oral comment was presented to the Board by Ann F. Jennings, Virginia Executive Director of the Chesapeake Bay Foundation who spoke in favor of the amendment and recommended the requirement for a wastewater management alternative analysis be established statewide.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board by a unanimous vote adopted the amendment to the Water Quality Standards 9VAC25-260-275 entitled Protection of Eastern Shore Waters for Clams and Oysters.

for Ellen Gilinsky, PhD.

for Ellen Gilinsky, PhD.
Director, Water Division

4/30/09

Date



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT IT'S MEETING ON APRIL 27, 2009

MINUTE NO. 5 - **General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Non-Metallic Mineral Mining, 9 VAC 25- 190**

The staff recommended that the Board amend the existing 9 VAC 25-190, General VPDES Permit Regulation for Non-Metallic Mineral Mining. The staff also recommended that the board receive, consider or respond to petitions by any interested person at any time with respect to reconsideration or revision of this regulation.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to amend the existing 9 VAC 25-190, General VPDES Permit Regulation for Non-Metallic Mineral Mining. The Board also voted to receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation.

A handwritten signature in cursive script, appearing to read "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.
Director, Water Division



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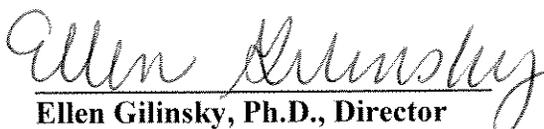
EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF April 27, 2009

MINUTE NO. 6 - VPDES General Permit for Storm Water Associated With Industrial Activity (9 VAC 25-151)

Prior to the meeting the Board was provided with a revised draft of the VPDES industrial activity storm water general permit regulation (9 VAC 25-151), a summary of the significant changes to the regulation, and a summary of public comments and staff responses. During the meeting the Board was provided with an additional amendment to correct a typo in the regulation. Burton Tuxford gave the staff presentation and discussed the noteworthy changes to the regulation, and recommended that the Board adopt the regulation as final. Brooks Smith representing the VMA spoke and asked that a "Board adoption" step be added to the TMDL special condition in Part I B 7 of the permit. David Sligh representing the James River Riverkeepers also spoke and asked that the Board not adopt the regulation because the Riverkeepers feel it does not adequately address their water quality concerns.

Board Decision

Based on the briefing material, the correction presented at the meeting, the staff presentation, and much discussion, the Board voted unanimously to adopt the amendment to the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated With Industrial Activity (9 VAC 25-151) as recommended by staff. This action was taken with the assertion that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of the regulations.


Ellen Gilinsky, Ph.D., Director
Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 7 - Proposed Amendments to the Virginia Underground Storage Tank Technical Standards and Corrective Action Requirements Regulation, 9 VAC 25-580

The Board had been provided a draft of the proposed amendments to the Underground Storage Tank Technical Standards and Corrective Action Requirements regulation prior to the board meeting. Betty Lamp summarized the proposed amendments for the board members.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize Department staff to take the proposed amended regulation (9 VAC 25-580 *et seq.*), as presented by the staff, to public hearing and public comment.


James J. Golden
Deputy Director for Program Development



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON April 27, 2009

MINUTE NO. 8 – Actions on the proposed amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.

Betsy Bowles with the Office of Land Application Programs presented the proposed amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management. The Board was asked to authorize for public comment and hearing the proposed amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management.

No questions followed the staff presentation.

Board Action:

Chairman Shelton Miles abstained from the vote.

Based upon the information provided by staff, the Board voted unanimously to accept the staff recommendations:

1. Approve for public comment and hearing the proposed amendments to the Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management as presented; and
2. A State Water Control Board member serve as the hearing officer.

A handwritten signature in cursive script that reads 'Ellen Gilinsky'.

Ellen Gilinsky, PhD.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 9 – Petition for Rulemaking/Plasticulture

Richard (Rick) F. Weeks, Jr., Chief Deputy, presented a summary of activities the Department had undertaken since the public notice of the Petition. He explained that the Department has been in negotiations with the Departments of Agriculture and Consumer Services, and Conservation and Recreation on a Memorandum of Agreement (MOA) to be used to ensure the proper use of Best Management Practices to manage pollutants and sediment from the plasticulture operations.

Mr. Weeks recommended that the Board delay action on the petition until the next meeting in order to provide an opportunity to finalize negotiations with the plasticulture industry.

The Board agreed to a delay, but made it clear that they are ready to proceed with a regulatory action if negotiations are unsuccessful or the MOA is inadequate.

A handwritten signature in black ink, appearing to read 'R. F. Weeks, Jr.', written over a horizontal line.

Richard F. Weeks, Jr.
Chief Deputy



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON April 27, 2009

MINUTE NO. 10 – Actions on TMDLs for Difficult Run, Lick Creek, Rivanna River, and Parker Creek (benthic TMDLs), and the Opequon benthic TMDL modifications.

David Lazarus with the Office of Watershed Programs presented the TMDL reports for the Difficult Run, Lick Creek, Rivanna River, and Parker Creek, requesting their approval. Also presented were the modifications for the Opequon Watershed TMDLs. The Board was asked to amend the Water Quality Management Planning regulation to include the nine waste load allocations for these segments contained in the previously EPA approved TMDL reports. Public comments were received on the proposed amendments for the Rivanna River bacteria and benthic TMDLs. Staff has supplied comment to the stakeholders addressing their concerns.

In accordance with the Board's delegation, the Board was notified of upcoming actions by the DEQ Director to approve twenty-nine TMDLs, ten TMDL modifications, and six Implementation Plans, and authorize updating the appropriate Water Quality Management Plans.

No questions followed the staff presentation.

Board Action:

Based upon the information provided by staff, the Board voted unanimously to accept the staff recommendations:

1. Approve the portions of the benthic TMDL reports presented in Tab K for Difficult Run, Lick Creek, Rivanna River, Parker Creek, and the modifications to the Opequon Watershed benthic TMDLs, as the plans to achieve the pollutant reductions necessary for the attainment of water quality standards;
2. Authorize staff to update the appropriate Water Quality Management Plan for those basins; and,

3. Amend the Water Quality Management Planning Regulation by adopting the nine Waste Load Allocations into 9 VAC 25-720, sections 60.A, 110.A and 90.A, as described in Attachment II of Tab K.

for 
Ellen Gilinsky, PhD.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 11 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, reported to the Board that there were no regulated parties to be reported as being in significant noncompliance for the quarter ending September 30, 2008.

The Board accepted the report.

A handwritten signature in cursive script, reading "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 12– VPDES Consent Special Orders

Kathleen O’Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Town of Hamilton
2. Hammaker East, L.P.
3. Robert L. Ingram, Jr.
4. S.E.A. Solutions Corp.
5. Blacksburg Country Club, Inc.
6. Aqua Virginia, Inc., Lake Monticello
7. Town of Big Stone Gap
8. Novozymes Biologicals, Inc.

The Board unanimously approved the Orders and further authorized the Department’s Director, or his designee, to execute the Orders on the Board’s behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script, reading 'Kathleen F. O'Connell'.

Kathleen F. O’Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 13 VWP Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Consent Special Orders for:

1. Stanley Martin Companies, LLC
2. Beverly Hill, Inc. & The Wilton Companies, LLC
3. Boone Homes Inc. of Roanoke
4. R&K Foundations, Inc.

The Board unanimously approved the Orders and further authorized the Department's Director to execute the Orders on the Board's behalf and to refer violations of the Orders to the Office of the Attorney General for appropriate legal action.


Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 14 Arthur J. Fisher VWP Consent Special Order

Lee M. Crowell, Wetlands Enforcement Program Manager, presented to the Board the Consent Special Order for Arthur J. Fisher. After some discussion of the contents of the Order and public comment made with respect to the Order, the Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script that reads 'Lee M. Crowell'.

Lee M. Crowell
Wetlands Enforcement Program Manager
Division of Enforcement



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 15 – Groundwater Program and other Consent Special Orders

Lee M. Crowell, Wetlands Enforcement Program Manager, presented to the Board the Consent Special Order for Six L's Packing Co., Inc.

The Board unanimously approved the Order and further authorized the Department's Director to execute the Order on the Board's behalf and to refer violations of the Order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script that reads 'Lee M. Crowell'.

Lee M. Crowell
Wetlands Enforcement Program Manager
Division of Enforcement



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Secretary of Natural Resources

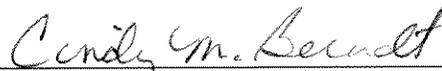
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 16 – Public Forum

Reverend Fowler appeared during the public forum to thank the Board and the Department for constructing a ground water monitoring station in the Northern Neck.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE 17 – Virginia Clean Water Revolving Loan Fund – Supplemental FY 2009 VCWRLF Loan Authorizations for Special Federal Stimulus Funds

Mr. Walter Gills, Program Manager of the Department's Construction Assistance Program, made a presentation to the Board based on a memorandum dated April 27, 2009. The memorandum identified the staff's recommended loan amounts and terms for 32 projects recommended for Supplemental FY 2009 Virginia Clean Water Revolving Loan Fund assistance from special federal stimulus funds.

Mr. Gills began his presentation by noting that the Intended Use Plan (IUP) and Project Priority List (PPL) for FY 2009 had already been approved by the Board in December but that approximately \$77 million in additional funds had subsequently become available from the federal stimulus package. Consequently, DEQ had undertaken an additional application solicitation process and received 294 applications requesting \$1,360,675,547. He summarized the staff's application screening and evaluation process and the resulting development of a draft PPL that was announced for public review and comment on March 25th. A public meeting was held on April 15th and a summary of the public comments was provided to the Board as an attachment to the staff memorandum. Mr. Gills explained that he had met with all the applicants on the initial PPL to verify their readiness to proceed status and project costs and to provide initial information on the stimulus requirements and expectations.

Based on initial discussions with the listed applicants, comments received during the public comment period, and coordination with the Governor's office (especially related to their analysis of current unemployment rates throughout the state) Mr. Gills recommended several modifications to the draft PPL. The funding amounts for the City of Lynchburg, Town of Cape Charles, Town of New Market, Wise County, and Tazewell County PSA were reduced to spread the funds out to a significant number of projects. A Henry County project was added in response to public input and a very high unemployment rate in that area. The HRSD and Lynchburg reuse projects were taken off of the list based on concerns regarding their readiness to proceed and cost-effectiveness. The Algal Nutrient Removal Project in Hopewell was added as well as 5 alternative energy utilization projects as a result of public comments. In an effort to reach as many projects as possible, Mr. Gills indicated that the program would forego 1% of the 4% allowance for program administration to provide more funding for projects. Even still, eight (8) of the projects on the draft PPL project list could not be reached due to the limited amount of available funding. These changes resulted in a revised total loan amount of \$77,720,311 for 32 projects.

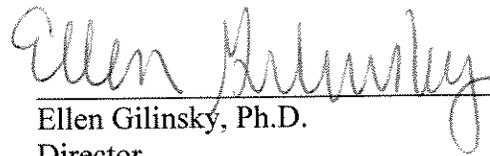
Mr. Gills also recommended that the Board establish contingency projects in case there were project cost reductions with the funded projects and/or a de-obligation of funds from other states that were not able to fully utilize their stimulus allotments. He also explained that, since all the 'conventional' projects met the Board's hardship criteria and that all the green infrastructure projects provided environmental benefits over and above that required by regulations, the staff believed it appropriate and consistent to offer this stimulus funding to all of the recipients in the form of 100% principal forgiveness loans.

Board Decision: After a brief discussion, the Board voted unanimously to:

1. Authorize the execution of the 32 loans at the amounts and terms listed below.

	Locality	Loan Amount	Terms
1	City of Lynchburg	\$24,960,000	100% PF
2	City of Richmond	\$979,000	100% PF
3	City of Richmond	\$1,678,000	100% PF
4	City of Richmond	\$3,551,000	100% PF
5	Alleghany County	\$10,000,000	100% PF
6	Town of Cape Charles	\$4,463,973	100% PF
7	Town of Big Stone Gap	\$1,836,909	100% PF
8	Town of New Market	\$4,265,116	100% PF
9	Town of Clintwood	\$803,985	100% PF
10	Town of Stanley	\$100,000	100% PF
11	Town of Orange	\$2,117,500	100% PF
12	Town of Hillsville	\$552,900	100% PF
13	Wise County	\$1,037,000	100% PF
14	Tazewell County PSA	\$2,000,000	100% PF
15	Smyth County	\$861,428	100% PF
16	Wythe County	\$1,449,340	100% PF
17	Smyth County	\$9,300	100% PF
18	Town of Fries	\$309,200	100% PF
19	Henry County	\$705,000	100% PF
20	Loudoun Water	\$580,000	100% PF
21	Loudoun Water	\$1,196,330	100% PF
22	New Kent County	\$6,752,136	100% PF
23	City of Bedford	\$165,330	100% PF
24	Fairfax County	\$3,803,000	100% PF
25	Westmoreland County	\$890,000	100% PF
26	City of Hopewell	\$600,000	100% PF
27	City of Lynchburg	\$400,000	100% PF
28	Town of Abingdon	\$378,900	100% PF
29	Town of Warrenton	\$400,000	100% PF
30	Augusta County Service Authority	\$364,964	100% PF
31	Town of Culpeper	\$260,000	100% PF
32	City of Covington	\$250,000	100% PF
	Total Funding	\$77,720,311	

2. Establish the Tazewell County PSA, Wise County, and Town of Cape Charles projects as 1st priority contingency and the City of Norton, City of Lexington, Town of Richlands, and Town of Pulaski projects as 2nd priority contingency should additional funds become available through project cost reductions, dropouts, or additional funds becoming available through the national re-allotment.



Ellen Gilinsky, Ph.D.
Director
Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING OF April 27, 2009

MINUTE NO. 18 -

Ellen Gilinsky, Water Division Director, gave the Board an update on obtaining funding for a study on nutrient losses related to the irrigation reuse of non-bulk, non-BNR water, which represents approximately 5% of water reuse applications. When the Board adopted the Water Reclamation and Reuse Regulation (9VAC25-740), they directed staff to pursue a source of funding for such a study, and in the absence of funding for the study, the Board directed DEQ staff to assemble, review and report on available data to determine if this use represents a significant source of nutrients to state waters.

We reported that DEQ has been unable to obtain funding for the stud, despite contacting members of the technical advisory committee who worked on drafting the regulation, as well as federal and state agencies with an interest in such issues. Therefore, at the direction of the Board, DEQ staff will cease their search for study funding and instead assemble, review and report on available monitoring data of monthly N and P loads for non-bulk irrigation reuse of non-BNR reclaimed water to a service area submitted by permittees. Staff findings will be reported to the Board in December 2009.

The Water Division Director also provided an update on the status of the study plan required by the Board's approval of the Smith Mountain Lake Virginia Water Protection Permit. A condition of the permit required that AEP conduct a study to determine the relative impact of providing streamflows through hourly auto-cycling compared to continuous releases. The study plan was to be developed in consultation with the Department of Game and Inland Fisheries, the Department of Environmental Quality, the Citizens for the Preservation of the River, and the Tri-County Re-licensing Committee.. Chairman Miles represented the Board in these consultations. The plan has been submitted to DEQ staff and we are currently reviewing the plan and it will be provided to the Board for action and its next meeting.

Finally the Board was informed of a petition from the City of Roxboro, North Carolina requesting public water supply protection along the Dan River for their proposed water intake in accordance with our Virginia regulation. Virginia localities above and below this water intake are concerned about this request. The Board accepted the petition, as required, which initiates a public notice and comment period. Staff will return to the Board at its next meeting so that they can decide based on the comment whether to initiate a rulemaking or deny the petition.

A handwritten signature in cursive script that reads 'Ellen Gilinsky'.

Ellen Gilinsky, Ph.D.
Director, Water Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON April 27, 2009

MINUTE NO. 19 – Water Conservation Presentation

Scott Kudlas, the Director of Surface and Groundwater Supply Planning, was requested by Mr. Thompson to make a presentation regarding water conservation and outline what voluntary and mandatory actions could be pursued by the Board to increase the level of water conservation in Virginia.

Mr. Kudlas indicated that water conservation practices can be an important part of a water resource management program. He said that the literature looks at conservation strategies in terms of conservation measures and conservation incentives. Conservation measures are looked at in two ways—those that involve “hardware” and those that rely on human behavioral changes. He discussed the various hardware measures for different water use types. Mr. Kudlas explained that the human behavior changes may be the most important but also the most difficult to change. In Virginia many of these behaviors revolve around asset management, finding and repairing leaks in the distribution system. Water conservation incentives tend to come in three forms: public education, financial, and regulatory policies. He said that most localities in Virginia have some kind of education program but they may not be targeted to achieve the “biggest bang for the buck.” Financial incentives do exist in Virginia but are not commonly used. Mr. Kudlas reviewed some examples of programs implemented in other states that have resulted in greater conservation. He suggested that there was no magic bullet. He said that effective programs include a combination of these approaches.

Mr. Kudlas reviewed what he and his staff are seeing in Virginia with the Water Supply Planning Program. He told the Board that our knowledge of irrigation use and agricultural use is limited and routine efforts to manage unaccounted for water loss is rare. He recommended that voluntary actions could include: several efforts to help localities understand their demand and how to manage it, improving local billing systems, develop state certification programs, and demonstrating rainwater harvesting applications. He suggested that several mandatory steps could be considered, including: mandatory metering, clarifying local authority to manage outdoor water use, address a statutory loophole to retrofit housing stock built between 1978-1992, close the private well loophole in the Groundwater Management Area, require corrective

action of systems having more than a 10% unaccounted for water loss, and consider requiring water efficiency ordinances.

Mr. Kudlas addressed questions from the Board regarding mandatory metering, billing, ranges of per capita water use, and Dillon Rule issues. He also made the Board aware of an initiative by the State Water Commission to study water resource management issues and whether sufficient authorities exist to address current management challenges. The Board thanked Mr. Kudlas for his presentation.

Board Decision:

As this was an informational presentation requested by the Board, no Board decision was required. The Board took the information under advisement and asked that it be revisited when local plans have been completed in 2011. The Board also requested that staff keep them informed of State Water Commission initiative resulting from their current process.



Ellen Gilinsky, Ph. D.
Director, Water Division



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MINUTE NO. 20 – Legislative Update

The Board received a report from Ms. Angela Jenkins on the 2009 General Assembly Session.



Cindy M. Berndt



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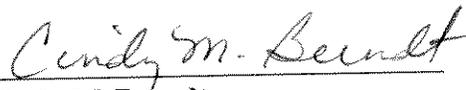
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON APRIL 27, 2009

MINUTE NO. 21 – Future Meetings

The Board set July 23-24, 2009 as the dates of their next regular meeting.


Cindy M. Berndt